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William J. Davis
Building Materials Investment Corporation,
Legal Department
1361 Alps Road
Wayne, NJ 07470

EXAMINER

CHEVALIER, ALICIA ANN

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AWDHOOT VASANT KERKAR,
TOMMY RODRIGUES, and FREDERICK W. SIELING

Appeal 2009-009786
Application 10/812,541
Technology Center 1700

Decided: April 23, 2010

Before ADRIENE LEPIANE HANLON, CHARLES F. WARREN, and
TERRY J. OWENS, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-3, 5-8, and 10. Claims 11-18, which are all of the other pending claims, stand withdrawn from consideration by the Examiner. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The Appellants claim a roofing shingle. Claim 1 is illustrative:

1. A roofing shingle comprising a top and bottom surface the bottom surface provided with a release coating of a continuous film of particles having good to perfect basal cleavage, wherein said release coating is disposed only on a pressure point portion of said bottom surface, wherein said particles are in the class phyllosilicates.

The References

Fasold	2,326,724	Aug. 10, 1943
Algrim	4,738,884	Apr. 19, 1988

Cleavage (crystal), http://en.wikipedia.org/wiki/Basal_cleavage (hereafter Wikipedia).

The Rejections

Claims 1-3, 5-8 and 10 stand rejected under 35 U.S.C. § 103 over Algrim in view of Fasold and Wikipedia.

OPINION

We affirm the rejection.

Issue

Have the Appellants shown reversible error in the Examiner's determination that the applied prior art would have rendered prima facie obvious, to one of ordinary skill in the art, a release coating of a continuous film of particles disposed only on a pressure point portion of a shingle's bottom surface?¹

¹ The Appellants state that "[t]he stepped transition region located at the sharp transition in thickness between the top portion of the anterior layer [shingle's top layer], which is unbonded, and the portion of that layer bonded to the posterior layer [shingle's bottom layer], results in a pressure point within the stack" (Spec. 2:12-15).

Findings of Fact

Algrim discloses a shingle having on its bottom surface at a position corresponding to a strip of tab sealant adhesive (12) on its top surface (and corresponding to the Appellants' pressure point portion), a strip of release material (14) to prevent the bottom surface from sticking to the tab sealant adhesive (12) on the top surface of an adjacent shingle when the shingles are stacked upon each other (col. 5, ll. 19-30; Fig. 4). The release material can be any material which is nonadherent to the sealant so as to prevent the shingles from sticking to each other (col. 5, ll. 33-35). Suitable release materials include paper or polyesters treated with a nonadhering substance such as silicone or fluorocarbons, and liquid or emulsions of silicone-based or fluorocarbon-based substances which are applied directly to the shingle by any method such as spraying (col. 5, ll. 36-42).

Fasold teaches that finely divided materials such as mica flakes, talc, silica dust or the like may be adhered to the non-weather exposed surface of roofing to prevent sticking of the adjacent layers of the roofing material in a package (p. 1, left col., ll. 26-31).²

Analysis

The Appellants argue (Br. 15):

Even if the silicone or fluorocarbon taught by Algrim were completely replaced with the talc taught by Fasold, the resultant combination still would not yield the present invention, because the presently claimed invention requires adherence of phyllosilicate directly to the shingle and only to the pressure point of the shingle. Algrim and Fasold provide no teaching that this would be enough to prevent adhesion of the shingles during storage.

² Wikipedia is relied upon by the Examiner for a definition of "basal cleavage" (Ans. 4).

Thus, the Appellants argue, “combining Algrim and Fasold would, at best, teach one of ordinary skill in the art to apply talc to the entire surface, resulting in an increased cost of materials and labor” (Br. 13-14).

Algrim teaches that the release material can be any material which does not adhere to the sealant and which prevents the shingles from sticking to each other when stacked (col. 5, ll. 28-35), and Fasold teaches that finely divided materials such as talc and mica (which are among the Appellants’ phyllosilicates (Spec. 6:1, 7:10)) prevent adjacent layers of roofing material in a package from sticking to each other (p. 1, left col., ll. 26-31). Hence, one of ordinary skill in the art would have had a reasonable expectation that Fasold’s mica and talc would be effective as Algrim’s release material applied directly to a shingle only at a position corresponding to the strip of tab sealant adhesive (12) of an adjacent shingle to prevent the shingles from sticking together when stacked upon each other in a package (Algrim, col. 5, ll. 24-35, 41-42). Therefore, the use of Fasold’s mica or talc as Algrim’s release material would have been *prima facie* obvious to one of ordinary skill in the art. *See In re O’Farrell*, 853 F.2d 894, 904 (Fed. Cir. 1988) (“Obviousness does not require absolute predictability of success For obviousness under § 103, all that is required is a reasonable expectation of success”).

Conclusion of Law

The Appellants have not shown reversible error in the Examiner’s determination that the applied prior art would have rendered *prima facie* obvious, to one of ordinary skill in the art, a release coating of a continuous film of particles disposed only on a pressure point portion of a shingle’s bottom surface.

DECISION/ORDER

The rejection of claims 1-3, 5-8, and 10 under 35 U.S.C. § 103 over Algrim in view of Fasold and Wikipedia is affirmed.

It is ordered that the Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

PL Initial:
sld

William J. Davis
Building Materials Investment Corporation,
Legal Department
1361 Alps Road
Wayne NJ 07470